

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 9, 2009

STATE OF TENNESSEE v. RYAN LEE GRAYSON

Appeal from the Circuit Court for Cannon County
No. F08-60 Robert E. Corlew, III, Judge

No. M2008-02096-CCA-R3-CD - Filed August 12, 2009

The Defendant, Ryan Lee Grayson, pleaded guilty in the Cannon County Circuit Court to simple possession of marijuana and driving on a suspended license. He received an effective sentence of eleven months and twenty-nine days. The trial court denied his request for a suspended sentence and ordered him to serve his sentence in the county jail. On appeal, the Defendant challenges the trial court's denial of his motion for suspension of his sentence. Upon our review of the record and the parties' briefs, we affirm the sentencing decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and J.C. McLIN, JJ., joined.

Kenneth R. McKnight, Assistant Public Defender, Murfreesboro, Tennessee, for the appellant, Ryan Lee Grayson.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; William Whitesell, District Attorney General; and David L. Puckett, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

We glean the following information from the record before us on appeal. A Cannon County grand jury returned a three-count indictment against the Defendant for events occurring on December 21, 2007—Count 1: possession of marijuana with the intent to sell or deliver, a Class E felony, see Tennessee Code Annotated section 39-17-417; Count 2: driving while his license was cancelled, suspended, or revoked, a Class B misdemeanor, see Tennessee Code Annotated section 55-50-504; and Count 3: failure to wear his seatbelt, a Class C misdemeanor, see Tennessee Code Annotated section 55-9-603. The Defendant pleaded guilty on June 27, 2008, to simple possession of

marijuana, a Class A misdemeanor, and driving while his license was suspended, a Class B misdemeanor.¹ The seatbelt charge was dismissed.

The Defendant received concurrent terms of eleven months and twenty-nine days for the possession offense and six months for the driving offense. Also, the judgment forms reflect that a suspended sentencing hearing was set for August 15, 2008.

At the August 15 hearing, the twenty-four-year-old Defendant testified that he was in good health and caring for his young son. He also tended to his parent's house, where and with whom he resided. He relayed that he had a high school diploma and that he was planning to attend Middle Tennessee State University, but was financially unable to do so. He had recently started working in construction and got paid three to four hundred dollars a week.

When asked about the circumstances of the offense, the Defendant stated that, on December 21, 2007, he approached a roadblock and was not wearing his seatbelt. He was asked to pull over and, following a discussion with the officer, the officer searched the car and discovered marijuana.

The Defendant admitted that, at the time of his arrest for these offenses, he was on misdemeanor probation in Cannon County for trespassing and assault (imposed on December 11, 2007). As a result of his arrest for these offenses, he was found to be in violation of that probation and served thirty-five days in jail. While on bond for the trespassing and assault charges, the Defendant was arrested on September 15, 2007, in Davidson County for simple possession of a controlled substance. He pleaded guilty to that charge and received a six-month, probationary sentence, beginning on October 5, 2007. Accordingly, he was also on probation in Davidson County at the time he committed the present offenses.

The Defendant confirmed that, in Rutherford County in 2003,² he was convicted of criminal impersonation and simple possession of marijuana and was sentenced to concurrent, suspended terms of six-months and eleven months and twenty-nine days, respectively. He further acknowledged his arrest for theft of property in 2002, resulting in a felony conviction and a two-year, suspended sentence. According to the Defendant, he violated judicial diversion on the theft offense, was thereafter convicted, and served forty-five days in jail.

The Defendant admitted that he was guilty of the present offenses. He stated that he previously had a problem with marijuana, but he was no longer using marijuana, having quit after his arrest for these offenses. While he was in Cannon County Jail on a prior offense, he participated in drug and alcohol classes. He tried to continue with these classes following his release but "the

¹ Neither a copy of the guilty plea petition nor a transcript of the guilty plea hearing are a part of the record on appeal.

² It appears from the investigation report attached to the Defendant's brief that he was arrested in 2003 and later convicted in 2004. However, this report is not certified as a part of the record on appeal.

program closed.” He had not looked for any other programs: “[He] had plans to, but [he hadn’t] had any problems at all.” He was willing to submit to drug screening and an alcohol and drug assessment as conditions of a suspended sentence. Finally, he stated that he would follow the recommendations of the court if granted release.

At the conclusion of the hearing, the trial court denied his request for a suspended sentence and ordered the Defendant to serve his eleven-month and twenty-nine-day sentence in the county jail. The trial court reasoned as follows:

[The Defendant] testifies well and the [c]ourt finds he’s a likable fellow. He’s one who’s working now, has been working. His record’s not clean. And in addition to the quantity of marijuana which the State asserts was in his possession at the time of his arrest and in addition to the number of prior convictions that he has—it is troubling to the [c]ourt that [the Defendant], in fact, was on probation at least for two convictions and he had appeared, as I understand, in court within less than 30 days, had been placed on probation less than 30 days before this event occurred; the fact that he was initially given the opportunity and was placed on diversion and that was taken away from him based upon the other charges sometime ago; the other revocations of probation don’t speak well for him.

... [I]t appears to [the court] in all fairness that [the Defendant] perhaps was given an opportunity when he was allowed to plea to a misdemeanor.

Following the entry of an order denying a suspended sentence, this appeal followed.

Analysis

The Defendant argues that the trial court erred by denying him a suspended sentence. Specifically, the Defendant contends that “pure incarceration does nothing to address his” substance abuse problem. The State argues that the issue is waived due to an incomplete record on appeal and, additionally, that the trial court properly sentenced the Defendant.

Misdemeanor sentencing is controlled by Tennessee Code Annotated section 40-35-302, which provides in part that the trial court shall impose a specific sentence consistent with the purposes and principles of the 1989 Criminal Sentencing Reform Act. See Tenn. Code Ann. § 40-35-302(b). Misdemeanor sentencing is designed to provide the trial court with continuing jurisdiction and a great deal of flexibility. See State v. Troutman, 979 S.W.2d 271, 273 (Tenn. 1998); State v. Baker, 966 S.W.2d 429, 434 (Tenn. Crim. App. 1997). A defendant convicted of a misdemeanor is not entitled to a presumptive sentence. See State v. Creasy, 885 S.W.2d 829, 832 (Tenn. Crim. App. 1994).

In misdemeanor sentencing, a separate sentencing hearing is not mandatory, but the court is required to provide the parties with a reasonable opportunity to be heard as to the length and manner of service of the sentence. See Tenn. Code Ann. § 40-35-302(a). The trial court retains the authority

to place the defendant on probation either immediately or after a time of periodic or continuous confinement. See Tenn. Code Ann. § 40-35-302(e). In determining the percentage of the sentence to be served in actual confinement, the court must consider the principles of sentencing and the appropriate enhancement and mitigating factors, and the court must not impose such percentages arbitrarily. Tenn. Code Ann. § 40-35-302(d).

Initially, we agree with the State that failure to include the transcript of the guilty plea hearing in the record prohibits this Court from conducting a full de novo review of the sentence under Tennessee Code Annotated section 40-35-210(b). In any event, the trial court noted the quantity of marijuana found in the Defendant's possession and the fact that the Defendant was allowed to plead to a misdemeanor when charged with a felony. Moreover, the record before us supports the trial court's findings relative to the Defendant's criminal history and previous unsuccessful attempts at probation. The Defendant was on probation at the time he committed the present offenses, having been in court and placed on probation just ten days before his December 21, 2007 arrest. Given the Defendant's past criminal history, he would be unlikely to comply with the requirements of a suspended sentence and his drug problem would best be treated in a correctional facility. Ordering the Defendant to serve his sentence in confinement is consistent with the principles of the sentencing act. This issue is without merit.

Conclusion

Based upon the foregoing, we conclude that the Cannon County Circuit Court's decision denying the Defendant a suspended sentence was proper. The sentencing decision is affirmed.

DAVID H. WELLES, JUDGE